



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: June 10, 2010

Agenda Item No. 4: Designation of Lead Agency under the Surface Mining and Reclamation Act (SMARA) Pursuant to Public Resources Code Section 2771 for the McLaughlin Mine (CA Mine ID #91-28-0003), Karl Burke (Agent), Homestake Mining Company (Operator), Counties of Lake, Napa and Yolo.

INTRODUCTION: Pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA), whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency. Should a question arise regarding which public agency serves as the SMARA lead agency, the State Mining and Geology Board (SMGB) shall designate which public agency will serve as the Surface Mining and Reclamation Act (SMARA) lead agency. The SMGB is considering making such determination at the request of the Department of Conservation Office of Mine Reclamation (OMR).

STATUTORY CONSIDERATIONS: Article 2 Public Resources Code Section 2728 defines a SMARA lead agency as:

““Lead agency” means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to this chapter.”

In regards to lead agency jurisdiction, Article 5 PRC Section 2771, states:

“Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the board. The board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The board shall designate the public agency which shall serve as the lead



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agency, giving due consideration to the capability of the agency to fulfill adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility.”

Need to submit an amended reclamation plan is addressed in the SMGB regulations, Title 14 California Code of Regulations (CCR) Section 3502(e), which states:

“An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the CCR commencing with Section 3700”.

BACKGROUND: The McLaughlin Mine is located within Lake, Napa and Yolo Counties (Figure 1), and is comprised of the following facilities:

- Lake County: Mill and tailings impoundment facility (TIF);
- Napa County: Eighty percent of the pit lakes and waste rock disposal units; and
- Yolo County: Davis Creek Reservoir and twenty percent of the mine pit lakes.

Essentially, the reclamation footprint encompasses approximately 1,566 acres (Table 1). The breakdown per county is Napa County (761 acres), Lake County (540 acres), and Yolo County (255 acres).

All three lead agencies implemented permits for select surface mining activities within their respective jurisdiction.



Table 1 Summary of Surface Mine Components		
Project Component	Acres to be Disturbed	Location
Mining area	211	Napa (80%), Yolo (20%)
Crushing and grinding area	60	Napa
Low grade ore storage	76	Napa
Waste rock dump	342	Napa
Mill site	24	Lake
Tailings disposal facility	493	Lake
Water reservoir	204	Yolo
Ore disposal facility	20	Napa and Lake
Roads, transmission lines, and substations	15	Lake, Lake and Yolo
Quarry	8	Lake
Powder magazine storage	3	Yolo





Figure1: Aerial image of the McLaughlin Mine and vicinity, Napa, Lake and Yolo Counties.

Based on discussions held with representatives of Napa, Lake and Yolo Counties, the SMGB, on May 10, 2010, received a request from the OMR to make a determination of lead agency jurisdiction pursuant to SMARA.

A reclamation plan was approved for the surface mining operation in 1983. Napa County was established as the SMARA lead agency during the California Environmental Quality Act (CEQA) process, which was triggered by the preparation of a mining and reclamation plan. Minor amendments to the 1983 reclamation plan were approved by Napa County in 1985, 1992 and 1993, which consisted of continuing the use of explosives, expanding the south mine pit, and disposing of waste rock in the north and south mine pits, respectively. In 2002, Lake County proposed a Negative Declaration for CEQA purposes to amend the reclamation plan for the Tailings Impoundment Facility (TIF); however, OMR did not receive correspondence from Napa County on this matter.

PRC Section 2728 defines lead agency as the county which has the principal responsibility for approving a reclamation plan pursuant to SMARA. The operator maintains that the TIF cannot be reclaimed pursuant to the approved reclamation plan for technical reasons, necessitating an amendment to the reclamation plan (CCR Section 3502(e)). The operator has requested that Lake County amend the reclamation plan to reflect a different strategy for reclaiming the TIF, and Lake County is planning to do so. However, not being the SMARA lead agency, Lake County does not have the authority to amend the reclamation plan.

The need for determination of one lead agency for the McLaughlin Mine is further exemplified in the sporadic inspection reporting activities conducted by each of the three Counties involved. The inspection reporting history for the site is summarized in Table 2.



Table 2
Summary of Inspection Record

Inspection Report Date	Inspection Agent	Inspection Report Date	Inspection Agent
10/4/1991	Napa Co.	2/20/2001	Yolo Co.
5/4/1992	Lake Co.	4/30/2001	Lake Co.
4/27/1993	Lake Co.	6/8/2001	Napa Co.
5/23/1994	Yolo Co.	4/1/2002	Napa Co.
5/26/1994	Lake Co.	4/28/2002	Lake Co.
5/1/1995	Lake Co.	4/18/2004	Lake Co.
5/11/1995	Yolo Co.	4/19/2004	Napa Co.
4/28/1997	Lake Co.	5/9/2005	Napa Co.
4/20/1998	Lake Co.	6/3/2005	Lake Co.
4/21/1998	Napa Co.	5/8/2006	Napa Co.
5/17/1999	Napa Co.	5/7/2007	Napa Co.
5/18/1999	Lake Co.	6/23/2008	Napa Co.
5/8/2000	Napa Co.	7/16/2009	Napa Co.

A lead agency under SMARA is responsible for the issuance of a Permit to Mine, or Conditional Use Permit for the entire surface mining operation. The various permits required, and the agency which issued the permit is summarized in Table 3.



Table 3
Major Permit Requirements for the McLaughlin Project

Permit	Agency
Use Permits	Napa ^{a, b} , Yolo ^{a, b} , and Lake ^{a, b} counties
Variance	Napa County ^a
Rezoning	Lake ^{a, b} and Yolo ^{a, b} counties
Surface Mining and Reclamation Act permits	Napa ^a , Yolo ^a , and Lake ^a counties
Mining and Reclamation Regulations (43 CFR 3809)	Bureau of Land Management ^b
Dam approvals	California Department of Water Resources, Division of Safety of Dams ^b
Hazardous waste facility permit	California Department of Health Services ^b
Solid waste disposal facility permit	Lake ^b county, State Solid Waste Management Board
Waste discharge requirements and NPDES permit	Regional Water Quality Control Board Central Valley Region ^b
Authorities to construct and permits to operate	Bay Area Air Quality Management District ^b , Yolo/Solano Air Quality Pollution Control District ^{a, b} , Lake County Air Pollution Control District ^b
Water appropriation	State Water Resources Control Board ^{a, b}
Stream alteration agreement	California Department of Fish and Game ^b
Miscellaneous building, grading, road encroachment and abandonment permits	Napa ^b , Yolo ^b , and Lake ^{a, b} counties
Williamson Act Contract cancellations	Lake ^{a, b} County and possibly Yolo ^{a, b} County

^a Public meetings on permits and permit conditions prior to permit issuance

^b Review of permit conditions by the interested public or agencies upon the request of the interested party.

DISCUSSION: There is obviously an absence of clarity as to which county is the SMARA lead agency for the McLaughlin Mine, as seen in the inconsistent inspection reporting by each of the counties, and in attempts by Lake County to amend the reclamation plan that was originally approved and amended by Napa County. Thus, OMR has requested that the SMGB make a determination regarding lead agency jurisdiction for the site. The requested



determination is critical to ensure that the intent of SMARA as this site undergoes reclamation, which relies on the fundamental idea that there is only one reclamation plan and one lead agency for each surface mining operation, is upheld.

The SMGB is being requested to confirm or designate the public agency which shall serve as the lead agency. In considering this matter, the SMGB must give due consideration to 1) the capability of the agency to fulfill adequately the requirements of this chapter, and 2) to an examination of which of the public agencies has principal permit responsibility. All three public agencies have the capability to fulfill adequately the requirements of a lead agency under SMARA; however, the County of Napa has in its correspondence dated May 28, 2010, requested that it *"continue to carry out our role and responsibilities under the Surface Mining and Reclamation Act, including those associated with the facilities proposed Reclamation Plan amendment."* There remains no readily apparent reason why the County of Napa can not fulfill this role. As a lead agency, it is clear from the historical record that all three counties independently performed mine inspections at different times.

In regards to which of the public agencies has principal permit responsibility is less certain. Based on information presented in the Environmental Impact Report/Environmental Impact Statement, dated June 1983, Volume 1, there was not one agency that issued a Permit to Mine. Conditional use permits were issued by all three counties for select surface mining activities, along with permits being issued by other state and public agencies.

In summary, no one agency, or county, accepted responsibility for issuance of a permit to mine for the entire surface mining operation, or conducted mine inspections at least one each calendar year.

CONSIDERATIONS BEFORE THE SMGB: The SMGB is to determine, or confirm, which County is to serve as the SMARA lead agency.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer, based on the information provided herein, recommends that the SMGB either clarify and confirm, or determine, that Napa County is the SMARA lead agency, and that Napa County will fulfill all the obligations and responsibilities of a SMARA lead agency, for the entire surface mining operation, and until the site is adequately reclaimed in accordance with the approved reclamation plan, SMARA and the SMGB's regulations.



SUGGESTED SMGB MOTION:

To confirm SMARA lead agency status:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that Napa County is the SMARA lead agency for the McLaughlin Mine, CA Mine ID #91-28-0003, as defined by Public Resources Code Section 2728.

Or,

To determine the SMARA lead agency:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that [Napa, Lake or Yolo] County is the SMARA lead agency for the McLaughlin Mine, CA Mine ID #91-28-0003, under its authority provided by Public Resources Code Section 2771.

Respectfully submitted:

Stephen M. Testa
Executive Officer



EXHIBITS

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| Exhibit A | OMR Memorandum dated May 10, 2010. |
| Exhibit B | SMGB correspondence dated May 20, 2010. |
| Exhibit C | OMR correspondence dated May 25, 2010. |
| Exhibit D | Napa County correspondence dated May 28, 2010. |

